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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

Case No. 2013-718

13 **EDUARDO MONTES**

14 Registered Nurse License Applicant

STATEMENT OF ISSUES

Respondent.

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16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., R.N. (Complainant) brings this Statement of Issues solely in
19 her official capacity as the Executive Officer of the Board of Registered Nursing.

20 **Application History**

21 2. On or about June 15, 2012, the Board of Registered Nursing received an application
22 for Licensure by Examination for a Registered Nurse License from Eduardo Montes
23 (Respondent). The Board denied the application on August 3, 2012. Respondent appealed the
24 denial of his application in correspondence dated August 22, 2012. On or about October 5, 2012,
25 the Board of Registered Nursing received an application for Licensure by Endorsement for a
26 Registered Nurse License from Respondent. The Board agreed to convert and consolidate
27 Respondent's original application for Licensure by Examination into a single Application for

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1 Licensure by Endorsement, the denial of which was construed to have been appealed by
2 Respondent's correspondence of August 22, 2012.

3 **JURISDICTION**

4 3. This Statement of Issues is brought before the Board under the authority of the
5 following laws. All section references are to the Business and Professions Code unless otherwise
6 indicated.

7 **STATUTORY PROVISIONS**

8 7. Section 2761 states, in pertinent part:

9 "The board may take disciplinary action against a certified or licensed nurse or deny an
10 application for a certificate or license for any of the following:

11 "(a) Unprofessional conduct . . .

12 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
13 functions, and duties of a registered nurse, in which event the record of the conviction shall be
14 conclusive evidence thereof.

15 8. Section 2762 states, in pertinent part:

16 "In addition to other acts constituting unprofessional conduct within the meaning of this
17 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
18 chapter to do any of the following:

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20 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
21 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
22 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
23 himself or herself, any other person, or the public or to the extent that such use impairs his or her
24 ability to conduct with safety to the public the practice authorized by his or her license.

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1 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
2 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
3 or the possession of, or falsification of a record pertaining to, the substances described in
4 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
5 thereof.

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7 **REGULATORY PROVISIONS**

8 9. California Code of Regulations, title 16, section 1444, states in pertinent part:

9 "A conviction or act shall be considered to be substantially related to the qualifications,
10 functions or duties of a registered nurse if to a substantial degree it evidences the present or
11 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
12 safety, or welfare."

13 **FIRST CAUSE FOR DENIAL OF APPLICATION**

14 **(Substantially-Related Criminal Conviction)**

15 10. Respondent's application is subject to denial under section 2761, subdivision (f), in
16 conjunction with California Code of Regulations, title 16, section 1444, in that Respondent was
17 convicted of a crime substantially related to the qualifications, functions, or duties of a registered
18 nurse, as follows:

19 a. On or about December 12, 2006, after pleading nolo contendere, Respondent was
20 convicted of one interlineated misdemeanor count of violating Vehicle Code section 23103,
21 subdivision (a) [reckless driving] in the criminal proceedings entitled *The People of the State of*
22 *California v. Eduardo Montes* (Super. Ct. Los Angeles County, 2006, No. 6PS03406). The Court
23 sentenced Respondent to 1 day jail, placed Respondent on three years probation, and ordered
24 Respondent to pay fines.

25 b. The circumstances surrounding the conviction are that on or about July 28, 2006,
26 during a routine traffic stop, Respondent was contacted by the Pasadena Police Department.
27 Respondent was arrested for driving with a tested blood alcohol level of 0.120/0.118%.

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1 c. On or about December 09, 2005, after pleading nolo contendere, Respondent was
2 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)
3 [driving while having 0.08% and more, by weight, of alcohol in his blood] in the criminal
4 proceedings entitled *The People of the State of California v. Eduardo Montes* (Super. Ct. Los
5 Angeles County, 2006, No. 5MT08910). The Court placed Respondent on thirty-six months
6 probation, ordered Respondent to perform 194 hours of community service, and ordered
7 Respondent to complete First-Offender Alcohol Program.

8 d. The circumstances surrounding the conviction are that on or about August 21, 2005,
9 Respondent was arrested for driving while under the influence.

10 **SECOND CAUSE FOR DENIAL OF APPLICATION**

11 **(Unprofessional Conduct: Dangerous Use of Alcoholic Beverages)**

12 11. Respondent's application is subject to denial under section 2761, subdivision (a), in
13 conjunction with section 2762, subdivision (b), in that Respondent used alcoholic beverages to an
14 extent or in a manner dangerous to herself and others. Complainant refers to, and by this
15 reference incorporates, the allegations set forth above paragraph 10, subparagraphs (a) through
16 (d), inclusive, as though set forth fully herein.

17 **SECOND CAUSE FOR DENIAL OF APPLICATION**

18 **(Unprofessional Conduct: Conviction Involving Consumption of Alcohol)**

19 11. Respondent's application is subject to denial under section 2761, subdivision (a), in
20 conjunction with section 2762, subdivision (c), in that Respondent was convicted of a criminal
21 offense involving the consumption of alcoholic beverages. Complainant refers to, and by this
22 reference incorporates, the allegations set forth above paragraph 10, subparagraphs (a) through
23 (d), inclusive, as though set forth fully herein.

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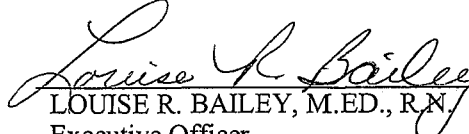
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Denying Eduardo Montes' application for a Registered Nurse License; and
2. Taking such other and further action as deemed necessary and proper.

DATED: MARCH 5, 2013


LOUISE R. BAILEY, M.ED., R.N.
Executive Officer
Board of Registered Nursing
State of California
Complainant

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